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certified by the clerk to be a true transcript of the record but containing nothing to identify its contents as the evidence adduced on the trial, and no indorsement or other earmark of the judge to indicate that he had seen it or approved it as a true transcript of the evidence, cannot be made a part of the record.

**4. Appeal—Writ of Error—Questions Presented for Review—Necessity for Setting Forth Evidence.**—Whether the trial court committed prejudicial error in calling a witness in a civil case of its own motion cannot be considered, where the evidence given by the witness is not before the court.

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SCOTT *v.* CHICHESTER, Sergeant.

Jan. 23, 1908.

[60 S. E. 95.]

**Criminal Law—Punishment—Term of Imprisonment—Inclusion of Time of Parole.**—Where a prisoner who had been paroled on good behavior thereafter defaulted and was remanded to jail, he was entitled to be discharged on expiration of the period of his sentence, counting the time during which he was on parole, and he could not be held for the period of his sentence, not counting the time while on parole.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 15, Criminal Law, § 3313.]

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NORFOLK & W. RY. CO. *v.* DUKE & RUDACILLE.

Jan. 23, 1908.

[60 S. E. 96.]

**1. Appeal and Error—Judgment—Conclusiveness.**—A judgment of the Supreme Court of Appeals remanding a cause for new trial necessarily determined that the circuit court had jurisdiction, and concludes the raising of such question subsequently, since a decision of the Supreme Court of Appeals settles the question of jurisdiction, and that and all other matters determined becomes *res judicata* with the finality of such judgment or decree, where the question raised upon second appeal or writ of error was necessarily involved on the former appeal or writ of error, whether actually adjudicated or not.

**2. Same.**—A decision of the Supreme Court of Appeals on a former writ of error, approving an instruction in effect construing a contract to be severable, concludes an objection on a subsequent trial to the refusal of an instruction that the contract was entire.

**3. Same.**—A decision of the Supreme Court of Appeals on a former writ of error, approving an instruction that in determining what constituted a reasonable time for the delivery of railroad ties